

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS**

PLAINVILLE GENERATING CO., LLC,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 05-11210-GAO
)	
DTE BIOMASS ENERGY, INC. and)	
PLAINVILLE GAS PRODUCERS, INC.,)	
)	
Defendants.)	

**AFFIDAVT OF WESLEY S. CHUSED IN OPPOSITION TO
PLAINTIFF'S MOTION FOR A SHORT ORDER OF NOTICE**

Commonwealth of Massachusetts }
 }
County of Suffolk } ss.

Wesley S. Chused, upon oath, deposes and states as follows:

1. My name is Wesley S. Chused and I am co-counsel for Defendants DTE Biomass Energy, Inc. and Plainville Gas Producers, Inc. in this action.
2. On September 27, 2005, pursuant to this Court's Notice of Scheduling Conference, I, along with co-defense counsel, W.C. Blanton and Plaintiff's counsel, Steven Ferrey, participated in a telephone conference call in accordance with Local Rule 16.1(B), to discuss the agenda of matters to be discussed at the Scheduling Conference in this case, scheduled for October 25, 2005, and to prepare and file a joint statement as required by Local Rule 16.1(D).
3. At no time during our September 27, 2005 conference call did Mr. Ferrey mention Plaintiff's intention to file a motion to seek preliminary injunctive relief in this case.

4. I then prepared a draft of a proposed Joint Statement and emailed it to Mr. Ferrey and Plaintiff's co-counsel, Christopher L. DeMayo, on October 11, 2005. *See Exhibit A.*

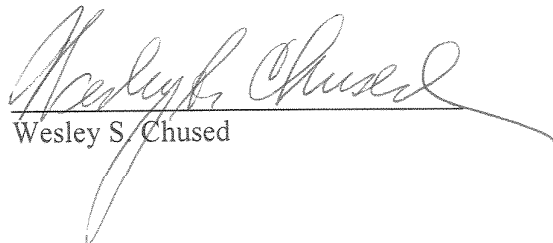
5. By email dated October 14, 2005, from Mr. Ferrey, Plaintiff agreed to the proposed Joint Statement and authorized defense counsel to sign the Joint Statement. *See Exhibit B.* In that email, Mr. Ferrey made no mention of Plaintiff's intention to seek preliminary injunctive relief, much less to have such a motion on the agenda of the October 25, 2005 Scheduling Conference.

6. On October 14, 2005, I then electronically filed the Joint Statement with the Court.

7. It was not until the morning of October 17, 2005 that I received a telephone call from Mr. DeMayo in which he announced, and confirmed in an email later that day, that Plaintiff would file a motion for preliminary injunctive relief and a motion for a short order of notice "to be argued at the conference next Tuesday." *See Exhibit C.*

8. I note the following statement at page 8 of the memorandum of law filed by Plaintiff in support of its Motion: "On two separate occasions during August 2005, counsel for Defendants informed counsel for Plaintiffs [*sic*] that Defendants were going to meet with Plaintiffs [*sic*] at the Facility during specific weeks in August to provide documents, maps, information, keys and materials necessary for an orderly transition of Plaintiff or its affiliate into the responsibilities of the gas supplier function being unilaterally suddenly abandoned by Defendant PGP." At no time during August 2005 or any other time did I inform either Steven Ferrey or Christopher L. DeMayo or any other person of any such thing.

I declare under penalty of perjury that foregoing is true and correct. Executed on October 20, 2005.



Wesley S. Chused

Wesley Chused

From: Wesley Chused
Sent: Tuesday, October 11, 2005 10:00 AM
To: Ferrey, Steven; DeMayo, Christopher L.
Cc: 'Blanton, WC'; Sellers, Lori
Subject: Plainville Generating Co. LLC v. DTE Biomass Energy, Inc., et al

Dear Messrs. Ferry and DeMayo,

Attached is a draft of a proposed Joint Statement for our submission to the Court in anticipation of the October 25 scheduling conference in the above case. Please advise ASAP as to whether you approve of this and whether I have your authority to sign this (electronically) on your behalf and file it with the Court. I look forward to hearing from you.



011 (Rule 16 Joint
Statement)....

Wesley S. Chused
Looney & Grossman LLP
101 Arch Street
Boston, MA 02110
Office: 617-951-2800 x551
Fax: 617-951-2819

<http://www.lglp.com/>

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EXHIBIT A

Message

Page 1 of 1

Wesley Chused

From: Ferrey, Steven [SFERREY@LLGM.COM]
Sent: Friday, October 14, 2005 3:10 PM
To: Blanton, WC
Cc: Wesley Chused
Subject: RE: Plainville

I agree to the joint report and you may sign for us or stipulate our agreement. I have written to AAA earlier this week to dismiss and copied you.

Steven Ferrey
Consulting Counsel
LeBoeuf, Lamb, Greene & MacRae
260 Franklin Street
Boston, MA 02110
Tel: (617) 748-6800
Fax: (617) 439-0341

From: Blanton, WC [mailto:wblanton@Blackwellsanders.com]
Sent: Friday, October 14, 2005 2:38 PM
To: Ferrey, Steven
Cc: Wesley Chused
Subject: Plainville

Please contact Wes Chused ASAP re our joint report, which is due no later than Monday (and possibly today, depending on how one treats the weekend). Also, how's the dismissal of the arbitration case coming?

This e-mail, including attachments, contains information that is confidential and may be protected by the attorney/client or other privileges. This e-mail, including attachments, constitutes non-public information intended to be conveyed only to the designated recipient(s). If you are not an intended recipient, please delete this e-mail, including attachments, and notify me. The unauthorized use, dissemination, distribution or reproduction of this e-mail, including attachments, is prohibited and may be unlawful.

EXHIBIT B

10/14/2005

Wesley Chused

From: DeMayo, Christopher L. [CDEMAYO@llgm.com]
Sent: Monday, October 17, 2005 1:06 PM
To: Wesley Chused
Cc: Ferrey, Steven
Subject: Plainville Generating Co., LLC v. DTE, et al

Dear Wes,

Here is the letter regarding items that your client has not provided to Plainville Generating Co., and which is the subject of the preliminary injunction that we intend to file, as we discussed on the phone earlier.

In that motion for preliminary injunction we would also seek a letter of credit, or other form of security from your clients, for \$3 million.

Finally, as I mentioned, we plan to also bring a motion for a short order of notice to allow the PI motion to be argued at the conference next Tuesday.

Regards,
Chris

Christopher DeMayo
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
260 Franklin Street
Boston, MA 02110-3173
tel 617-748-6851
fax 617-897-9051

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EXHIBIT C

10/19/2005